

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2010-01 URT
June 25, 2010

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ISSUES

Utility Receipts Tax – Exemption Applicable to Gross Receipts Earned by Entity Created by Political Subdivisions

A company ("Taxpayer") is seeking a ruling that gross receipts earned from the operation of a sewer utility by an entity created by political subdivisions will not be subject to Indiana Utility Receipts Tax.

Authority: [IC 6-2.3-2-1](#); [IC 6-2.3-4-3](#); [IC 36-1-7-2](#); [IC 36-1-7-3](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling:

[Taxpayer] is an executive department of [a city in Indiana] established and operating pursuant to [statutory authority], and its Board of Directors serves as the board of the City's utility special taxing district and is an Indiana political subdivision. The City is... organized and operating pursuant to [statutory authority] and is an Indiana political subdivision. The Sanitary District..., acting by and through the board of Public Works ("District"), is an Indiana political subdivision established and operating under [statutory authority]. As part of a transaction in which [Taxpayer] will acquire the water utility and the sewer utility from the City, [Taxpayer], the District and the City are proposing to enter into an agreement pursuant to [\[IC 36-1-7\]](#), the interlocal cooperation statute, to form the Authority, a separate nonprofit entity, to acquire and operate the sewer utility currently owned and operated by the District. Pursuant to such agreement, the Authority will delegate certain responsibilities for the day to day management and operation of the sewer utility to [Taxpayer]. Specifically, (i) [Taxpayer] will provide all of the governmental personnel needed to operate the sewer utility and (ii) [Taxpayer's] treasurer will be responsible for the financial affairs of the sewer utility.

...

The purpose of the Indiana interlocal cooperation statute is to allow political subdivisions to coordinate the exercise of their powers either jointly or through a separate legal entity that acts on behalf of the entities. The Authority will be created by three Indiana political subdivisions as a separate legal entity, in effect creating the Authority as their joint alter ego. The interlocal cooperation agreement will provide for the duration, purpose, manner of financing, staffing and supplying the Authority, "as well as the methods that may be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination of the Authority" as required by [\[IC 36-1-7-3\(a\)\(1\)-\(4\)\]](#).

The Authority will be delegated all of the "appropriate and requisite authorizations, powers, functions and duties" of the three creating entities to allow it to administer and operate the sewer utility, which is currently administered and operated by the District. The Authority will explicitly delegate responsibility for its day to day operations to [Taxpayer]. [Taxpayer's] Board of Directors will serve as the Board of the Authority and the Authority will have no employees, but will instead utilize [Taxpayer's] employees. All governmental personnel operating the sewer utility will be [Taxpayer's] employees. [Taxpayer's] treasurer, by reason of the Agreement, will be receiving the funds from the operation of the sewer utility. The Authority is acting as a political subdivision because it is created by, and is acting on behalf of, three political subdivisions.

DISCUSSION

The imposition of the utility receipts tax is found in [IC 6-2.3-2-1](#), which provides:

An income tax, known as the utility receipts tax, is imposed upon the receipt of:

- (1) the entire taxable gross receipts of a taxpayer that is a resident or a domiciliary of Indiana; and
- (2) the taxable gross receipts derived from activities or businesses or any other sources within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana.

However, pursuant to [IC 6-2.3-4-3\(7\)](#), the gross receipts received by "a political subdivision for sewer and sewage service" are exempt from the tax.

[IC 36-1-7-2\(a\)](#) provides:

A power that may be exercised by an Indiana political subdivision and by one (1) or more other governmental entities may be exercised:

- (1) by one (1) or more entities on behalf of others; or
- (2) jointly by the entities.

Entities that want to do this must, by ordinance or resolution, enter into a written agreement under section 3 or 9 of this chapter.

[IC 36-1-7-3](#)(a) allows for and requires that, through the administration of a separate legal entity, the written agreement authorized by [IC 36-1-7-2](#)(a) provide for the duration, purpose, manner of financing, staffing and supplying the joint undertaking, establishment and maintenance of a budget therefore, as well as the methods that may be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination. Pursuant to [IC 36-1-7-3](#)(a)(5), the nature, organization, composition, and powers of the separate legal entity must be provided for in the written agreement unless a joint board, composed of and represented by members of all parties to the agreement, is formed. Pursuant to [IC 36-1-7-3](#)(b), the separate legal entity possesses only the powers delegated to it by the agreement.

RULING

The Department finds that the Authority qualifies for the exemption codified at [IC 6-2.3-4-3](#) and available to political subdivisions that operate a sewer and sewage utility. Accordingly, the gross receipts received by the Authority for sewer and sewage services are exempt from the Indiana Utility Receipts Tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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